

Before

**James C. Peck, Jr.**  
**Arbitrator**

**In the Matter of Arbitration Between:**

**P/O Jamie M. Miles, Grievant**

**V.**

**AAA Case No. 01-15-0005-4262**  
**P/O Jamie M. Miles (Terminated)**

**THE CITY OF PHILADELPHIA**

**Hearing Dates: October 20, 2016**  
**Decision Date: December 5, 2016**

**Appearances:**

For the Grievant - Stephen T. O'Hanlon, Esq.<sup>1</sup>

For the City of Philadelphia - Lisa Swiatek, Esq., City of Philadelphia, Law  
Department

**Procedural Background**

This arbitration was conducted pursuant to a collective bargaining agreement between the City of Philadelphia, Pennsylvania and Fraternal Order of Police Lodge, No. 5, which is the recognized exclusive collective bargaining representative for a unit of police officers employed by the City of Philadelphia.

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<sup>1</sup> Attorney O'Hanlon represented the Grievant as Special Counsel.

The City of Philadelphia and FOP Lodge 5 are parties to a collective bargaining agreement with a term of July 1, 2014 through June 30, 2017.<sup>2</sup> This agreement contains, among other things, a Grievance-Arbitration procedure (Article XXI) culminating in final and binding arbitration under the auspices of the American Arbitration Association.

The instant matter arises from a grievance filed by the Fraternal Order of Police on behalf of terminated Police Officer Jamie M. Miles, alleging that Officer Miles had been terminated without just cause.<sup>3</sup> Officer Miles received a 30-day suspension with Notice of Intent to Dismiss<sup>4</sup> on September 18, 2015, and later, a Notice of Dismissal. The Notice of Dismissal alleged that Miles had engaged in Conduct Unbecoming, Article 1, Section 010-10, specifically, “*Knowingly and willfully making a false entry in a department record or report*”, and Conduct Unbecoming, Article 1, Section 011-10, “*Abuse of Authority*”.

This grievance was subsequently denied by the City, and when the issues of this dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievance was referred to the American Arbitration Association for selection of a neutral arbitrator. Subsequently, by letter dated December 26, 2015, the undersigned was appointed arbitrator in this matter.

An evidentiary hearing was conducted on October 20, 2016, at offices of the American Arbitration Association, 230 South Broad Street, Philadelphia, PA 19102 pursuant to a Notice of Hearing which issued on July 21, 2016. Both the Grievant and the City were represented by counsel, and at hearing were afforded the opportunity to examine and cross-examine witnesses, and to introduce relevant exhibits. The Grievant, Police Officer Jamie M. Miles, was present and participated fully in the proceeding. Both parties made oral arguments on the record.

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<sup>2</sup> See Joint Exhibit 1, in evidence.

<sup>3</sup> See Joint Exhibit 2, received into evidence.

## Issues

Did the City of Philadelphia violate the express terms of the collective bargaining agreement by discharging Police Officer Jamie M. Miles without just cause? If the City is found to have violated the terms of the collective bargaining agreement, what is the appropriate remedy?

## Introduction

This case is about the discharge of Police Officer Jamie M. Miles, a 10-year veteran of the police force, who was terminated for allegedly falsifying an accident report concerning a minor fender-bender in which her boyfriend T. M. [REDACTED] was involved. The accident occurred as M. [REDACTED] was backing out of Officer Miles' driveway. There were no injuries, and minimal property damage.

## Evidentiary Summary

As this is a discharge case, the City of Philadelphia has the burden of proof, and was first to present its witnesses at the Hearing before me. Summarizing the testimony of the City's witnesses:

Corporal J. [REDACTED] T. G. [REDACTED] testified that he is responsible for collecting various reports, including accident reports, in the 8<sup>th</sup> Police District. Cpl. G. [REDACTED] asserted that the Grievant, who did not identify herself as a police officer, came to the 8<sup>th</sup> District, in civilian clothes, on May 31, 2014 to report an accident which had occurred on May 28, 2014. C. [REDACTED] provided her with a Form AA-600.<sup>5</sup> G. [REDACTED] further testified that the Form AA-600 is the form used for accidents not investigated by the police, and is basically used for a civilian to report a non-injury accident to their insurer. It is noted on the Form AA-600 that it is not to be used as trial evidence.

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<sup>4</sup> See Exhibit J-2, received into evidence.

<sup>5</sup> See Exhibit C-1, received into evidence.

Corporal G [REDACTED] further testified that the following day, June 1, 2014, while reviewing accident reports, he came upon an accident report filed on Police Accident Report Form 75-48C, the official police form, and upon investigation discovered that it had been filed by the Grievant at 6:45 PM on May 31, 2014 in the 18th Police District.<sup>6</sup>

G [REDACTED] viewed this report as irregular, since it had been filed by a non-8<sup>th</sup> District police officer who was not on duty, and the Filing Officer had gone to a different police district, the 18th District, to file the report. G [REDACTED] also noted, "*The wording in the report was exaggerated of a vehicle that was with the driver firmly with his brake –foot on the brake pedal, slowly coming out of the driveway and was completely stopped.*"<sup>7</sup>

G [REDACTED] testified that there had already been an original Police Accident Report Form 75-48C filed by Officer M. F [REDACTED] at around 9:40 AM on May 28, 2014, involving the same incident, at the same address, involving the same parties.<sup>8</sup> However, that report prepared by Officer F [REDACTED] concluded that the striking vehicle, i.e. **Driver #1**, was T [REDACTED] M [REDACTED], while the struck vehicle i.e. **Driver #2** was listed as K [REDACTED] C [REDACTED]. The report submitted 4 days later by the Grievant had the roles reversed, and assigned the blame for the accident to Ms. C [REDACTED].

Because this was an unusual situation of two competing accident reports, and because of the stilted, conclusionary language in the accident report submitted by the Grievant, Cpl. G [REDACTED] called this matter to the attention of his superior, and an investigation was commenced.

Captain F [REDACTED] P [REDACTED] was the Captain in charge of the Second Police District at the time that the accident between T [REDACTED] M [REDACTED] and K [REDACTED] C [REDACTED] occurred. P [REDACTED] testified that although he was nominally the Grievant's supervisor,

<sup>6</sup> See Exhibit C-3, received into evidence.

<sup>7</sup> See Official Transcript, Page 42, Lines 20-24.

<sup>8</sup> See Exhibit C-4, received into evidence.

she had not yet reported to work in his District because she was classified as injured-on-duty.

Lt. P [REDACTED] asserted that he was advised that Grievant Miles had filed an accident report in the 18<sup>th</sup> Police District, which is in Southwest Philadelphia, concerning an accident that had occurred in the 8<sup>th</sup> Police District, which is in Northeast Philadelphia, all the way across the City. P [REDACTED] noted: *"That's not supposed to happen. So when that happened, I thought it warranted further investigation into determining the exact circumstances that led to that occurring."*<sup>9</sup>

Lt. P [REDACTED] prepared a report for Inspector Benjamin Nash, and this report worked its way up the chain of command to the Office of Professional Responsibility and the Internal Affairs Division.

**Police Commissioner Richard Ross** is currently the Police Commissioner of Philadelphia but was First Deputy Commissioner in 2015, and was involved in disciplinary matters. He testified that he was the next-to-last step before the then-Police Commissioner Charles Ramsey signed-off on any discipline that was to be meted out.

Commissioner Ross noted that in May 2014 the Police Department had promulgated and implemented a police officer's code of ethics<sup>10</sup> which governed the standards by which police officers must abide, and emphasized the importance of remaining unbiased and acting without influence of personal feelings and relationships. Ross testified, *"...the appearance of impropriety is, you know, something that you don't want to have happen, and your integrity is paramount in your duties as a law enforcement officer, both on and off-duty".*<sup>11</sup>

Commissioner Ross testified that in making his recommendation to then Commissioner Ramsey concerning discipline for Officer Miles, he took into account not

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<sup>9</sup> See Official Transcript, Page 81, Lines 9-13.

<sup>10</sup> See Exhibit C-5, received into evidence.

<sup>11</sup> See Official Transcript, Pages 108-109.

only the report from the Internal Affairs Division, but also Miles' prior disciplinary history, which included a prior discharge for similar misconduct.

In this regard, Commissioner Ross noted that Officer Miles had previously been discharged for conduct unbecoming and neglect of duties, and for falsifying a report. Ross noted that although Officer Miles was reinstated by Arbitrator James Darby, Arbitrator Darby had reached several highly pejorative conclusions regarding Miles' veracity. Specifically, Arbitrator Darby found that Miles had falsified department records and deliberately lied about her whereabouts. Arbitrator Darby characterized Miles' testimony in the hearing before him as, "...clearly self-serving and questionable" and noted that Miles predicament, "...stems from her inability to tell the truth."<sup>12</sup>

Commissioner Ross testified that in the instant case he strongly disagreed with the conclusion of the Police Board of Inquiry, which had recommended that Officer Miles should merely be suspended for filing a false report. Ross noted that Miles had no business preparing an accident report, and that she should have been able to separate her personal life from her professional life. Further, Ross noted that Miles had failed to follow the specified procedure for property damage accidents, namely visiting the Police District of occurrence to make a report.

The effect of Miles' misconduct, according to Commissioner Ross, was to jeopardize the credibility of the entire police department. He testified,

*"The credibility of the entire organization is at stake. If you feel like someone can prepare a report on behalf of a loved one or someone close to them, clearly, it does not leave room for folks to believe or people to believe that the organization is of the highest integrity... And so it is very much an issue to conduct oneself in this manner."*<sup>13</sup>

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<sup>12</sup> See Exhibit C-6, received into evidence.

<sup>13</sup> See Official Transcript, Pages 115, 116.

**Captain Gregory Malkowski** testified briefly as to police records policies. As Captain of the Labor Relations Unit, and a 30-year police veteran, Malkowski testified that if an insurance company wanted a copy of the official police accident report, they would be required to seek that document from the Records Department in City Hall.

Concerning charges brought against police officers accused of misconduct, Malkowski testified that the Internal Affairs Division conducts an investigation and submits a memo summarizing its conclusions, but that the Charging Unit is the departmental entity which determines what charges, if any, are to be brought.

The Grievant also presented witnesses in support of its case, specifically:

**Former Police Sergeant T [REDACTED] C [REDACTED]**, who was terminated from the Police Department in 2010 for an alleged lack of integrity, testified that when the Grievant had previously worked for him there were no problems with her performance and that she was reliable and dependable. Under cross-examination, former Sgt. C [REDACTED] admitted that the matter of his discharge had been arbitrated and that the arbitrator had concluded that C [REDACTED] had violated the same portion of the Departmental Disciplinary Code that Grievant Miles was accused of violating, namely making a false report.

**Former Chief Inspector Evelyn Heath**, who served in the police department for 34 years, testified concerning the handling of paperwork regarding auto accidents, and the various accident report forms utilized to document such accidents. In former Inspector Heath's opinion, the Grievant did nothing wrong in assisting her boyfriend fill out and file an accident report. Heath noted that Police Officers routinely fill out paperwork for one another, without issue.

Under cross-examination, Inspector Heath conceded that she had been discharged from the Police Department in 2006, but that her termination was subsequently reversed by an arbitrator. Heath also admitted that she is currently suing the City for gender discrimination.

██████████, the daughter of the Grievant testified briefly concerning the underlying fender bender, and that T █████ M █████, her mother's boyfriend, proceeded to drive her to school following the accident.

T █████ M █████, who is the Grievant's boyfriend, testified concerning the accident and his subsequent interaction with Lieutenant K █████ C █████, father of C █████ C █████, the operator of the other vehicle. M █████ claims that Lt. C █████ initially minimized his estimate of damage, claiming that it was no big deal and suggesting that each party go their separate ways. But Lt. C █████ phoned later that afternoon to advise that the repairs to the C █████ vehicle would cost about \$1000.

M █████ also reviewed the accident report prepared and submitted on his behalf by the Grievant, and attested that the facts set forth thereon were true.

Officer Jamie M. Miles testified on her own behalf. Miles testified concerning her prior termination for allegedly falsifying records, and about her prior allegations of gender discrimination against various members of the Police Department.

Concerning the accident report which Miles prepared and submitted for her boyfriend, T █████ M █████, Miles claimed, *"I didn't change any information. I wrote it. Even if they are lengthy, or even if I have to quote. And this is, you know, in any kind of report, or any kind. If people tell me something, I wrote down what they say."*

Miles also offered an explanation for how the accident report came to be filed in the 18<sup>th</sup> Police District instead of the 8<sup>th</sup> Police District where the accident occurred. She claimed that she was at the 18<sup>th</sup> District cleaning out her locker when she decided to complete the report and file it there. Miles testified that she had on-duty Officer C █████ review her report, sign it, and enter it into the computerized system.



## Analysis and Discussion

As stated in the introduction of this Award, the issue to be decided herein is whether the City violated the terms of the collective bargaining agreement by discharging Police Officer Miles.

The burden of proof in discharge cases has previously been determined by Arbitrators Thomas G. McConnell, Jr. and Alan Symonette as being to a “*beyond a reasonable doubt*” standard. *FOP, Lodge 5 and the City of Philadelphia (Clarke)*, AAA Case No. 14 390 1611 06; *FOP, Lodge 5 and the City of Philadelphia (Kurowski)*, AAA Case No. 14 390 1372 98. In the past, I have utilized this “reasonable doubt” standard, and it is my intention to apply the “*beyond a reasonable doubt*” standard in the instant case.

Black’s Law Dictionary 161 (6<sup>th</sup> ed. 1990) defines “beyond a reasonable doubt” as “...fully satisfied, entirely convinced, satisfied to a moral certainty. This phrase is the equivalent of the words *clear, precise, and indubitable*.”

In the instant case, I have no doubt whatsoever that the City has established that the Grievant, Officer Miles, deliberately and knowingly filed a false accident report, for the apparent purpose of exonerating her boyfriend, T ■■■ M ■■■, from culpability in the minor fender-bender which occurred on May 28, 2014. I agree with the Police Board of Inquiry findings of September 18, 2015 that Officer Miles was guilty of abusing her authority in so doing.<sup>14</sup>

In reaching the conclusion that Officer Miles committed the offenses with which she has been charged, I carefully considered the sworn testimony of Officer Miles and

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<sup>14</sup> See Exhibit J-2, received into evidence.

that of her boyfriend, T ■■■ M ■■■, both with regard to the minor traffic accident which gave rise to this matter, and as it relates to the filing of the police accident report.

While I profess no particular expertise in the investigation of automobile accidents, if I were forced to choose between the two competing versions of the traffic accident involving Mr. M ■■■ and K ■■■ C ■■■, there is no question that based on all of the testimony presented at hearing, I would find that Mr. M ■■■ was at fault, in that he backed out into traffic without ensuring that it was safe to do so. This conclusion is in part based on **Exhibit C-8**, which is the relevant portion of 75 Pa.C.S.A. Section 3324, and imposes a duty on any vehicle entering a highway to yield the right of way to vehicles already on the highway. Indeed, M ■■■'s insurance company eventually fully compensated the owner of the other vehicle.

This conclusion is further supported by various Exhibits introduced during the Hearing, including **Exhibit C-10** which depicts minor damage to the right rear wheel arch of the car operated by K ■■■ C ■■■; and also **Exhibit G-5**, a series of color photographs showing minor damage to the right rear bumper cap of the car operated by Mr. M ■■■. Based on this photographic evidence, it seems more likely than not that M ■■■ was culpable when he backed out of the Grievant's driveway and struck the C ■■■ vehicle as it was passing by on Kirby Drive. There is no evidence that Ms. C ■■■ was operating her vehicle in an unsafe manner.

I have also carefully considered the testimony of the Grievant as to her reasons for filing the Philadelphia Non-Reportable Accident Report, Form 75-48C, which has been received into evidence as **Exhibit C-3**. Grievant Miles asserts that her purpose in going to considerable lengths to file an accident report was that her minor daughter, ■■■, was in the M ■■■ vehicle when the accident occurred. Miles testified, "*I filed the report on behalf of T ■■■ and my daughter. My minor daughter is involved, so I have the right to file a report on her behalf.*"<sup>15</sup>

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<sup>15</sup> See Official Transcript, page 313, Lines 16-19.

This particular testimony by the Grievant is devoid of credibility for several reasons: First, if Officer Miles was so concerned about possible injury to her daughter, it is doubtful she would have remained in bed for five minutes after learning of the accident.<sup>16</sup> Further, Miles would have sought a medical evaluation of her daughter to determine if her daughter had been injured, and would not have allowed her daughter to continue on to school.

I further find the timing of the filing of the subject Accident Report to be suspect. During the Hearing, Grievant Miles admitted that she did not call 911 or otherwise attempt to call the police about the accident until the evening of May 28, 2014. This is not the conduct of a mother who is concerned about a possible injury to her child.

There was, however, an intervening event between the time of the accident, which occurred around 8:45AM, and Miles' alleged first phone call to 911. Grievant Miles testified that her boyfriend, T ■■■ M ■■■, received a phone call from Police Lieutenant K ■■■ C ■■■, father of K ■■■ C ■■■, at about 4:45 PM on the afternoon of May 28, 2014, in which C ■■■ proposed to resolve the matter for about a thousand dollars, to pay for the repairs to the C ■■■ vehicle.

It was only then that the Grievant embarked on her cross-city quest to file a Police Accident Report which would shift the blame for the auto accident from her boyfriend, T ■■■ M ■■■, to the other driver, K ■■■ C ■■■.

I have carefully examined the handwritten accident report prepared and submitted by the Grievant.<sup>17</sup> This is a troubling document for several reasons: First, Officer Miles, who prepared this Accident Report, did not personally witness the accident, and was not on duty when the accident occurred. Therefore, she had no legitimate reason to file an accident report, particularly on Form 75-48C. There was absolutely no reason why T ■■■ M ■■■ could not have gone to the 8<sup>th</sup> Police District and filed a report himself, if he wished to do so.

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<sup>16</sup> See Official Transcript, Page 314, Lines 1-2.

<sup>17</sup> See Exhibit C-3, received into evidence.

Secondly, the narrative portion of the report on the second page of the accident report prepared by Officer Miles contains language which indicates a lack of objectivity. For example, M [REDACTED] did not merely back down the driveway, he "...inched out of the driveway" according to Miles, who was asleep in her bed when the accident occurred. Further, according to the report, M [REDACTED] stopped his car with the rear past the adjacent parked vehicles, "...foot firmly on the brake". How Officer Miles discerned that M [REDACTED] had his foot on the brake is somewhat of a mystery.

It appears to me that Officer Miles deliberately crafted her version of the accident report to slant the facts in favor of her boyfriend, T [REDACTED] M [REDACTED], and to allow him to escape possible liability for the accident. This, of course, is precisely the sort of conduct which is unbecoming of a police officer, and which is prohibited by the Police Officers Code of Ethics. Officer Miles acted in a biased fashion, and allowed her personal feelings and relationships to interfere with proper police procedure. Her lack of integrity in structuring the accident report to reflect that C [REDACTED] C [REDACTED] was the party at fault is unacceptable.

During the Hearing before me Counsel for the Grievant made several attempts to put forth his claim that Officer Miles was in fact terminated as retaliation for her prior and pending filing of EEO charges against the Police Department. The Grievant also asserted through Counsel that other Police Officers who were terminated following highly publicized incidents of misconduct had their dismissals reversed at arbitration, following their acquittal on criminal charges. As I indicated during the Hearing, that is not an issue before me. I am considering this matter only as it relates to any arguable violation of the collective bargaining agreement.

*Conduct Unbecoming* is punishable by a range of disciplinary actions. With regard to the alleged violation of Article 1, Section 010-10, *knowingly making a false entry into department records*, 1<sup>st</sup> offenses are subject to punishment from a 5-day suspension to Dismissal. Second Offenses are subject to punishment ranging from 15-days suspension to Dismissal.

Discharge is the most extreme industrial penalty, and has been referred to as “industrial capital punishment”, or more recently as the equivalent of “permanent exile”.<sup>18</sup> Discharge is often viewed as part of a disciplinary continuum, and that analysis is certainly valid in a case like this, where the Grievant had previously been discharged for similar misconduct.

Discharge has the effect of severing an employee where there is no longer any hope of rehabilitation. The sole purpose of discharge is to unburden the Employer from an individual whose conduct has become intolerable. Discharge abolishes the employment relationship, while a disciplinary suspension is designed to improve it.<sup>19</sup>

My analysis is guided, but not bound, by the findings of the Police Board of Inquiry, consisting of three experienced Police Officers, who concluded that the Grievant authored and filed a false police report, and who recommended a punishment of 20-days suspension. (The PBI also found the Grievant guilty of the charge of Abuse of Authority, but recommended no punishment for that infraction.)

Then-Police Commissioner Ramsey disagreed with the Police Board of Inquiry’s recommendation of no discipline for the charge of Abuse of Authority, and imposed termination as the penalty for Miles’ misconduct.

I have concluded that Officer Miles was in violation of departmental policy, with regard to the falsification of an accident report and with respect to her abuse of authority, and is deserving of discipline. The only issue is whether the imposed penalty of discharge is appropriate, or whether a lesser penalty may be sufficient to impress upon Officer Miles the seriousness of her misconduct.

If this was the first occasion where Officer Miles was found to have falsified department records, I could perhaps be persuaded to order her reinstated, but with a

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<sup>18</sup> Schroeder, “*Discharge: Is it Industrial Capital Punishment?*” 37 Arb. J. No. 4, 65 (1982).

<sup>19</sup> *Red Cross Blood Serv.*, 90 LA 393, 397 (Dworkin, 1988).

substantial suspension. However, as noted previously, this is a Police Officer who has previously been suspended for like and related misconduct, and who has previously been found by a noted Arbitrator to have an inability to tell the truth. Obviously, Arbitrator Darby's findings with respect to her veracity did not make a sufficient impression on Officer Miles; nor did she learn from her previous discharge. I am cognizant of the fact that while Arbitrator Darby reinstated Officer Miles, he did not exonerate Miles. The penalty Darby imposed of a loss of pay for the duration of her time off was substantial.

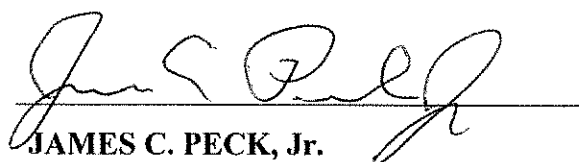
So, does a Police Officer who has twice been found to have falsified public documents still have the requisite credibility which would enable her to continue to work as a public servant? Consistent with the concept of progressive discipline, I conclude that in the instant case, Officer Miles has demonstrated that she is no longer worthy of the public's trust. .

I am, therefore, sustaining the decision of former Commissioner Ramsey to terminate the Grievant for knowingly and willfully making a false entry in departmental report, and for her abuse of authority.

### **AWARD**

Based on the evidence, and the discussion as set forth above, the undersigned makes the following award:

The grievance alleging that the Police Department violated the collective bargaining agreement by discharging Police Officer Jamie M. Miles is hereby DENIED.



**JAMES C. PECK, Jr.**

Arbitrator

Wallingford, Pennsylvania

December 5, 2016